



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

SEP 26 2016

Eric Rey
Zachary Fayne
Arnold & Porter LLP
601 Massachusetts Ave., NW
Washington, D.C. 20001-3743
Via certified mail and email

Dear Messrs. Rey and Fayne:

I am writing in response to your letters of September 12, 2016, and September 23, 2016, regarding the information request under Section 208 of the Clean Air Act that EPA sent to your client, FCA US LLC ("FCA") on July 29, 2016 ("Information Request").

In your September 12, 2016 letter, you propose search terms and a date limitation that FCA plans to use in connection with gathering certain electronically-maintained documents that are responsive to the Information Request. Specifically, we understand that the search terms are intended to assist FCA in identifying those documents, written in English, that are located in the United States or Italy, and that are responsive to certain high-priority requests, which I labelled as Priority 1, Priority 2, or Priority 3 requests in my letter to Messrs. Martel and Gross on September 7, 2016. We understand that FCA will propose additional search terms in the near future to help identify all other documents, written in English, that are potentially responsive to the Information Request. Finally, we understand that FCA will propose a third set of search terms in the near future to help identify all potentially responsive documents that are written in Italian.

We appreciate the opportunity to comment on the search terms for the high-priority information requests, and we are in agreement with those terms, provided that FCA accepts the proposed modifications to the search terms that are attached to this letter. Further, I want to take the opportunity to clarify our position as to the limited scope and purpose of the search terms.

As an initial matter, we are not agreeing that the search terms modify or replace the words set forth in the Information Request. While we recognize that agreed-upon search terms can be a useful tool for identifying responsive documents that are maintained on computers, servers, and other electronic devices, we do not agree that such terms define or limit the universe of responsive documents. FCA is obligated to produce all non-privileged documents that are responsive to the Information Request, irrespective of whether such documents fall inside or outside the bounds of the search terms.

Further, our agreement to the search terms is conditioned upon the legal team having taken reasonable steps to ensure that the search terms will be effective in collecting responsive documents. In your letter, you state that the search terms were "developed" by your legal team, but the letter does not explain the steps taken by the legal team in pursuing this effort. It is our view that each document custodian at FCA can provide useful insight into the terms that would be appropriate for searching his or her electronic devices. As a result, we believe that your legal team should, at a minimum, consult with each custodian to verify and, if necessary, expand the search terms to ensure that terms are well-matched with the potentially responsive documents stored on the custodian's devices.¹ Further, we believe that it makes sense for FCA to conduct "test" runs to ensure that the search terms do not produce results that are either overly broad (including an unreasonable number of non-responsive documents) or under-inclusive.

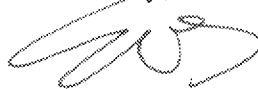
Lastly, EPA reserves the right to propose changes to the search terms in the future. EPA does not have access to FCA's employees, nor does it currently have access to FCA's documents. As a result, it is impossible, at this time, for EPA to assess the effectiveness of the search terms. Based upon the information that we have gathered to date, it appears to us that the proposed terms, as drafted by FCA, are overly narrow. As a result, we have proposed a number of modifications to broaden the search, as you will see when you review the attachment to this letter. That said, our views on this matter are likely to evolve over the course of the next several months while we receive and review the documents produced by FCA in response to the Information Request.

Regarding the proposed date limitation of December 31, 2015, we request that this be extended until May 27, 2016, the first date of our correspondence with FCA regarding this investigation.

In response to your letter of September 23, 2016, we agreed to modify the Information Request submission schedule as you have described to allow for the upcoming travel to Italy and review of potentially responsive documents.

Please let us know promptly if any of the qualifications set forth in this letter are of concern to FCA. If you wish to have a call next week to discuss this matter further, please contact Kathryn Caballero (kaballero.kathryn@epa.gov, 202-564-1849).

Sincerely,



Evan Belser
Chief, Mobile Source Enforcement Branch
Air Enforcement Division
Office of Civil Enforcement

Attachment

Cc: Leigh Rende and Joe Warren, DOJ

¹ We don't think it would be appropriate for custodians to be given the option to narrow the agreed-upon search terms.

Attachment to September 26, 2016 EPA letter regarding Search Term Modifications

Request #	A&P Suggested Text (from 9/12/16 letter)	EPA/DOJ Modifications
All	"3.0L engine" OR "3.0L" OR "3L" OR "ECRXT03.05PV" OR "FCRXT03.05PV" OR "GCRXT03.05PV" OR "Eco Diesel" OR "EcoDiesel" OR "WK" OR "DS" OR Cherokee OR Ram	<p>Add the following terms at each use: Diesel, Jeep, 1500, Dodge, Motori, VM*, Bosch, Umicore, Engine Temp Model, Temp Model, Engine Temperature Model, FTP, US06, test cycle, EGR, SCR, Coolant Dosing, Ex. 4 CBI Real World, Ex. 4 CBI Manipulat*, Cycle Detection, Penal*, Timer, Decay Factor, Step Function, NAFTA</p> <p>Ask custodians if the following terms were used for these projects, and what other colloquialisms were in use (across FCA & VM, in US and abroad): JGC, GC</p>
1	W/100	This should be changed to AND, since the terms referred may not necessarily be in close proximity
1	"Auxiliary Emission Control Device" OR AECD "Auxiliary Emission Control Feature" OR AECF OR "emission control" OR "Defeat Device")	Note missing "OR" after AECD. Add the following terms: Defeat
1	"disclos* OR notif*	Note extra quotation mark at beginning of term. Add the following terms: Clarif*, Discuss*, Meet*, Declar*
1	W/10	This should be changed to AND, since the terms referred may not necessarily be in close proximity
1	EPA OR "Environmental Protection Agency" OR "CARB" OR "ARB" OR "Air Resources Board"	Add the following terms: OTAQ, California, Joel, Ball, Dalton, Linc, Wehrly, Cert*, Complian*

3-4	"Auxiliary Emission Control Device" OR AECD "Auxiliary Emission Control Feature" OR AECF OR "emission control" OR "Defeat Device" OR "Exhaust Gas Recirculation" OR EGR OR "Selective Catalytic Reduction" OR SCR OR catalyst	Note missing "OR" after AECD.
3-4	W/10	This should be changed to AND, since the terms referred may not necessarily be in close proximity
3-4	"Valve cleaning" OR "valve train cleaning" OR Soot* OR Stick* OR Damage OR Overheat* OR Shudd* OR Stall OR Safety OR Acciden* OR Drivability OR Deterior* OR Startability OR "OBD Monitoring" OR Durab* OR Disabl* OR Deactiv* OR Dosing OR Overdos* OR "Load governor" OR "Field fix" OR "Component protection" OR Protection OR "ammonia slip" OR "NH3 slip" OR "urea slip" OR "pooling"	<div> Add the following terms: Justification, Justified, Adaptation, <div> Ex. 4 CBI DDV </div> </div>

11	"Auxiliary Emission Control Device" OR AECD "Auxiliary Emission Control Feature" OR AECF OR "emission control" OR "Defeat Device" OR "Exhaust Gas Recirculation" OR EGR OR "Selective Catalytic Reduction" OR SCR OR catalyst OR OBD OR "on board diagnostics" OR "fuel conservation" OR emissions	Note missing "OR" after AECD. Add the following terms: Fuel Economy, Fuel Efficiency*, Mileage, mpg, BSFC, Durab*, DDV, MIL, Dosing, Overdos*, NOx, Detox, Base Map, Engine Temp Model, Temp Model, Temperature Model, Ex. 4 CBI Ex. 4 CBI
11	To, From, CC, or BCC emails contain: "bosch" OR "umicore" OR "IAV" OR "Dellorto"	Add the following terms: VM For each company, include any & all email domain names that were in use from 2011 to the present, including domestic and foreign domains.
16-20	("Selective Catalytic Reduction" OR SCR) W/10 (Dosing OR Overdos* OR "Field Fix" OR "washcoat" OR damage OR "chip off" OR "chip-off" OR Bosch OR "Pooling" OR wet)	Remove first part of this restriction (SCR) since the field fix also contained an EGR element and possibly other elements. The search should capture all documents that contain mention of the terms within the second parenthetical. Add the following terms: catalyst, Field-Fix, recall, defective, failure, degrad*, liquid film, crystal, timer, slip, durab*, DDV, NOx
42-46	("Exhaust Gas Recirculation" OR EGR OR "Selective Catalytic Reduction" OR SCR) W/50 ("engine temperature" OR Ex. 4 CBI OR Ex. 4 CBI OR Ex. 4 CBI OR "temperature model")	Add the following terms to second parenthetical: Engine Temp, Engine T, Ex. 4 CBI Ex. 4 CBI Coolant T*, Consider w/100 range

52-54	("Selective Catalytic Reduction" OR SCR) W/10 (Dosing OR Overdosing OR adaptation OR "Load governor" OR "Warm-up" OR Warmup OR Bosch OR slip OR "Pooling" OR "feed gas" OR "SCR efficiency" OR "conversion efficiency")	Add the following terms to second parenthetical: Overdos*, on line, on-line, NH3 slip, odor, smell, liquid film, crystal, timer, capabilit*, extreme temp, deact, oxidation catalyst, precious metal, cycle sens*, cycle detect*, failure, degrad*, recommend*, safety margin,
52-54	W/10	This should be changed to AND, since the terms referred may not necessarily be in close proximity